IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.01.2013

Coram:-

The Hon'ble Mr. Justice T.RAJA

Writ Petition No.8187 of 2002

R.Dhanabalan ... Petitioner

vs.

1. Neyveli Lignite Corporation Ltd,
through Chairman cum Managing Director.

2. Director, Planning & Projects,
Neyveli Lignite Corpn, Ltd,

3. J.L.Mehta,
Director (Planning & Projects),
Respondents 1 to 3 having office
at Neyveli Lignite Corporation Ltd,
Corporation Office,
Block 1, Neyveli. ... Respondents

Writ Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.R.Singaravelan

For Respondents : Mr.N.A.K.Sarma

J U D G M E N T

The present writ petition has been filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus to call for the records relating to the order in Memo No.D (P&P) C 21/SM/2002, dt.14.02.2002, passed by the 2nd respondent, quash the same and consequently direct the respondents to reinstate the petitioner in service with all consequential benefits.

2. The present writ petition was dismissed on 13.10.2003 for want of prosecution, whereupon, a restoration application in W.P.M.P. No.43151 of 2003 was filed during November, 2003. By order of this Court dated 22.07.2011 passed in the said Miscellaneous Application, the Writ Petition came to be restored to file.

3. The petitioner herein joined the services of Neyveli Lignite Corporation (NLC) in the year 1977 as a Graduate Engineering Trainee. He was served with a Charge Memo dated, 10.06.1998, containing more than a couple of charges viz., he was in the habit of drafting and sending representations containing false allegations against his superiors and others; refusing to report for day-to-day work before the Chief Engineer, System Monitoring Department and preferring false complaints against him; and, despite the personal counsellings and advice given by the 2nd respondent not to indulge in such actions, by letter dated 04.05.1998, he threatened the Chief Personnel Manager to withdraw his Demi Official letter failing which he would inform the Central Vigilance Unit.
It is the case of the petitioner that primary material relating to the charge viz., he indulged in drafting and sending representations containing false allegations against superiors, being the Note dated 19.01.1998, the author of the same i.e., Deputy General Manager, Specialized Mining Equipment (SME) Division, was never summoned or examined despite repeated requests of the petitioner. Though the other charge is that, in his letters dated 20.04.1998, 27.04.1998, 04.05.1998 and 11.05.1998, the petitioner made false allegations against the higher-ups and thereby, he violated sub-Rule XXVI of the NLC Conduct Rules, the fact remains that they are only replies and reminders to the Demi Official Letter of the Chief Personnel Manager and thus, the question of violation of the conduct Rules does not arise at all. As regards the other charge that he did not report before the Chief Engineer one Mr.Viswanathan, it is stated that the said officer commented the petitioner as an eccentric and further, without assigning any work to the petitioner, the said Officer withdrew the facilities of Jeep and computer without which the petitioner could not discharge his duties. That is why, after such bitter experience, he was reporting for duty before the Deputy General Manager. In respect of the allegation that he threatened the Chief Personnel Manger by way of letter dated 04.05.1998, it is the claim of the petitioner that the said Officer, who had no legal authority to issue directions to him, send a Demi Officer letter, for which, the petitioner had to send a reply stating that unless adequate facilities are provided, it would be difficult for him to discharge duties and that if the authority was persistent in his attitude, he would have to resort to legal remedy available and such cautioning can never be construed as a threat amounting to any misconduct.
It is the further case of the petitioner that, without looking into these aspects, the Disciplinary Authority obsessed with utmost grudge against the petitioner concluded against the petitioner and when the report of the E.O. was furnished to him by communication dated 08.02.2001, the petitioner submitted his detailed objections on 17.02.2001. Very unfortunately, the Disciplinary Authority, without independently applying his mind to the report of E.O., issued a show cause notice to the petitioner, proposing to remove him from service and for the said notice, the petitioner submitted his explanation dated 10.12.2001. W.P. No.6571 of 2001 followed by W.A. No.2272 of 2001 filed by the petitioner, challenging the show cause notice on the ground of bias and mala fides on the part of R-2, were dismissed because of the reason that the issue was at the stage of show cause notice.
It is specifically averred by the petitioner that the findings laid against him may have to be tested only with reference to the contemporaneous materials available. The petitioner despite being the only person in the NLC with M.E. (Design), from 28.01.1998 onwards, was not even allowed to work and also was deprived of the basic facilities such as Jeep & computer. The public interest litigation filed by the petitioner in W.P. No.20228 of 1999 seeking to order investigation into the allegations was disposed of by this Court on 24.12.1999 directing the first respondent to consider the petitioner's representation and subsequent thereto, by virtue of Communication dated 24.04.2000, the petitioner came to be informed that the matter has been referred to CBI. It is only because of the fact that the petitioner endeavored to expose the corrupt activities of the 2nd respondent, with ulterior motives, all the higher-ups who joined hands with the said Authority somehow succeeded in preventing the petitioner from performing his duties and now, by passing the impugned order, they removed him from service. Therefore, the petitioner has come up with the present writ petition.

4. Mr.R.Singaravelan, learned counsel appearing for the petitioner, at the first instance, addressed

this Court on the issue of availability of alternative remedy and submitted that as against the impugned order, even though the petitioner has the remedy of appeal before the first respondent, the petitioner is not in a position to move the said authority since he is very much biased against him. To demonstrate the actuality involved, he referred to the communications of the said authority, dated 22.11.2000 and 20.07.2001, wherein he referred to the petitioner as an eccentric and quarrelsome and a person having negative traits. Thus, when it is apparent that the appellate authority has already made up his mind and passed very sharp comments and that the petitioner's case would never be dealt with by him as a just authority, this Court may take this as an exceptional case to decide it despite the fact that an alternative remedy is available.

By referring to the case laws reported in 1998 WLR 641 (T.Ramamoorthy vs. The Secretary, Sri Ramakrishna Vidyalaya High School, etc. & others) and 2010 (5) CTC 449 (Sheeba Philominal Merlin v. The Repatriates Co-op. Finance & Development Bank Ltd.) on the proposition that if there is a statutory provision enacted by the Legislature prescribing a particular mode for terminating the service or dismissing the employee, it should be done only in that particular manner and not otherwise, learned counsel submitted that in spite of the request made by the petitioner for supply of statement of allegations and documents sought to be furnished, the Department withheld the same and acted against Rule 9(1) of the NLC Employees (Control and Appeal) Rules connected to the inquiry procedure; thereby, the petitioner is totally deprived of a fair opportunity to effectively defend his case. According to him, supply of documents relied on in the charge sheet being mandatory, non-supply of the same vitiated the entire enquiry proceedings. Further, the Department cannot say that non-supply of the documents sought for by the petitioner did not cause any prejudice to him because, the Apex Court in Union of India v. S.K.Kapoor (2011 4 SCC 589) and S.M.Narula v. Union of India (2011 (4) SCC 591) once again stressed and emphasized on the settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same.

It is pointed out by the learned counsel that the Enquiry Officer, to hold 'misconduct' on the part of the petitioner, relied upon two letters - one dated 06.04.1998 written by the Chief Personnel Manager and the other dated 19.01.1998 of the Deputy General Manager/SME. In the first letter which was addressed to none else than the petitioner himself, the Chief Personnel Engineer who is not at all the superior/disciplinary/appellate authority of the petitioner, by directing him to refrain from writing representations criticizing other officials, threatened that otherwise, disciplinary action would follow. Also, the other letter of the Deputy General Manager is totally irrelevant to the subject. Therefore, according to the learned counsel, when the petitioner did not write any letter containing false and defamatory allegations against any of his superiors except expressing his genuine grievance that some of the officials acted against the interest of the institution itself and that he was not provided with a Jeep and Computer to carry out his duties, the Enquiry Officer, without taking note of the fact that there was nothing to conclude adversely against the petitioner, by referring to the letters which are either pointless or extraneous, held against the petitioner. According to him, the evidence of the witnesses stood in favour of the petitioner was purposely brushed aside and further, without even discussing the issue in the light of the evidence, it is vaguely concluded by the Enquiry Officer, a quasi judicial authority, that through evidence, charges have been proved. It is ultimately pleaded that when illegality is ex facie apparent and the order passed by the quasi judicial authority not being legally sustainable, the relief sought for may be granted by this Court.

5. Per contra, Mr.N.A.K. Sarma, learned counsel for the respondents/Board submitted that the petitioner is not justified in rushing to this Court without exhausting the alternate appellate remedy available to him. He added that merely because certain remarks have been passed against the petitioner by the appellate authority, it does not mean that the said authority has already made up his mind against the petitioner. Even otherwise, since there is prospects of deciding the case either

way in the course of appeal, if still felt prejudiced, the writ remedy is always open to the petitioner. According to him, even on the earlier occasions, the petitioner moved this Court when show cause notice was issued to him and this Court never accepted or endorsed the allegations of bias and mala fides alleged by the petitioner. Even though all the opportunities were given to the petitioner to defend his case, it was the petitioner who precipitated his case and therefore, once it is clear that all the procedures have been complied with, normally, it is not for the court to ordinarily interfere with the quantum of punishment imposed on a delinquent employee. According to him, if the decision of an employer is found to be well within the legal parameters and the ultimate order of removal was passed sensing the hard impact of the grave misconduct on the part of the employee, jurisdiction of the courts can never be invoked. So submitting, he pleaded for dismissal of the writ petition in threshold.

6. I have carefully considered the rival submissions advanced on either side.
First of all, it is necessary to answer on the issue of alternative remedy available to the petitioner. Even though the respondents have argued that the petitioner could have availed the remedy of appeal and thereafter, if he feels aggrieved, he can very well test the validity of such order passed by the appellate authority, it is seen that in the proceedings dated 22.11.2000 and 20.07.2001 of the appellate authority, he termed the petitioner as quarrelsome, argumentative, faultfinding coercive person, and remarkably, those remarks are relevant to the same period and connected to the same set of allegations against the petitioner. Therefore, this case, in the given circumstances, is a fitting case to be entertained despite the fact that there is an appellate remedy available.
That apart, when the writ petition is of the year 2002, after 10 years of its pendency on the file of this Court, now, it will not be fair to throw out the Writ Petition on the footing that the petitioner has got an effective alternative remedy. Seemingly, the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. Therefore, it is well settled that, in appropriate cases, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies viz., (a) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Since the appellate authority/R1 herein has already termed the petitioner as 'quarrelsome' and 'argumentative', the present writ petition, sidelining the appellate remedy, is very well maintainable. Hence, this issue is answered against the respondents.

7. The only remaining question is as to whether, in the light of the settled legal position that normally courts cannot substitute their own conclusion with regard to guilt of delinquent, any compelling circumstance exists here warranting interference by this Court with the impugned order of removal of the petitioner from service.
The petitioner challenges the impugned order mainly on two segments viz., (i) the letters criticizing his superiors did not amount to misconduct and (ii) he was not given adequate opportunity to put forth his defence in the course of enquiry.
It is seen that the petitioner after entering into the services of the Corporation, during 1977-1992, was working in the Specialized Mining Equipments (SME) Department of Mines and later, he was employed in Training and Development Department of the Indigenous Wing. From July, 1996 till his removal from service in February, 2002, he was working in the System Monitoring Department as Deputy Chief Engineer. On 02.02.1998, the petitioner wrote a letter to the Director (Personnel), Corporate Office, NLC, seeking transfer from the Computer Wing to SME/Technical wing, and while making such request, it was alleged by him thus:-
" Every time N.L.C is getting defective machines, due to the mistakes/omission in the technical specification in the contract. Most of the time, the person, ordering the machines may not be available in the services of the corporation (due to retirement) when the machines are put in operation. Every time one is blaming the others and the net result, there is a loss to the corporation.

At present my service is being utilised for pointing out the defects in the contract (postmortem work) at System Monitoring Department. The loss to the corporation cannot be rectified by post mortem. Everytime the equipment suppliers are escaping and we are fighting with each others with the postmortem reports.
Instead, if my service is used while preparing the technical specification, during technical discussion with suppliers & consultants and while approving the design drawing, it would be beneficial to the corporation.
...
So, I request the Director (Personnel) to transfer me to the SME Zone/Mines, my parent Department."
Subsequent to the aforesaid letter, the Chief Engineer of the System Monitoring Unit to which the petitioner was attached to, had submitted a Note dated 12.02.1998, addressed to the Director (personnel), remarking about the petitioner thus:-
"... on enquiry, I came to understand that he was not utilized in technical wing after 1998 due to his eccentric behaviour. Then he was transferred to the Training Complex, where also he behaved in an eccentric manner with the Unit Head. Hence he was transferred to the Indeginisation Wing where he did not cooperate with the field staff, in restricting the import items, especially with the Mines field staff. Hence he was transferred to the System Monitoring Department on 12.07.96.
At present, in this department also he is behaving in an eccentric manner. In his request letter for transfer to SME Zone, he blames the Mines staff that they are getting the defective machines due to mistakes/omissions in the technical specifications in the contract with the firm, which is incorrect. Moreover he has been asked to do the study work in Mine-I and II for improving the production. But, on the other hand, out of the 13 studies he has made so far, only 6 attribute to production and the remaining 7 studies attribute only to finding mistakes/omissions in the technical specifications for the contract with the firm, for Mine-I Expansion which the field staff did not agree, which in turn reflected on the image of the System Monitoring Department.
Hence, due to his eccentric behaviour, I hereby recommend to transfer him from the System Monitoring Department."

From the above internal letter of the Chief Engineer having regard to the request for transfer made by the petitioner, it is very plain that the petitioner while addressing his request made allegations as if the entire Unit is not functioning well and he alone was the sincere official which ultimately prompted the Chief Engineer to make a recommendation to the Director Personnel for transfer from the System Monitoring Unit.
Subsequently, by letter dated 17.02.1998, the petitioner sought permission of the Director to approach the Court by stating thus:-
" My continuation at System Monitoring Department will affect my career growth. Under this circumstance, I have no other alternative other than to redress my grievance through the Court of law. So, I request the Director (Personnel) to permit me to go to the Court."

8. From the above, it is strange to see that the petitioner, who was all along making allegations against almost all the officials and the field workers stating that he was addressing the higher-ups daringly only for the overall welfare of the Institution, took a u-turn and reflected his real intention that the daring letters and representations already made were only to take care of his career growth. It is also strange that when he had already made up his mind to approach the Court of law against the authorities themselves and no authority would in fact prevent him from approaching the Court, the only inference could be drawn from the above representation of the petitioner is that, in a way, he warned the Institution to accede to his request or else to face the consequences. It is only under this circumstance, the Deputy General manager by observing in his Note, dated 19.03.1998, that most of the remarks made by the petitioner in his representation are baseless and his behavior

amounts to misconduct under the NLC Rules, addressed the Director (Personnel) that, on account of his eccentric behaviour the facilities like computer, jeep etc., were withheld as it was felt that he may destroy the important files in the computer and ultimately, requested the Director for taking disciplinary action against the petitioner.
Consequent thereto, the petitioner sent a representation dated 28.3.1998 addressed to the Director (Personnel), commenting his immediate superior, the Chief Engineer, thus:-
" The Chief Engineer is a Diploma holder in Instrument Branch. I am a mechanical engineer having Master Degree. He does not know the basics of mechanical engineering. I have spent more time to explain my work to him but most of the time he could not understand my work. My precious time has been wasted in teaching him the mechanical subject. He is not in a position to guide me technically and he is a hindrance to my work. In spite of my excellent work done during his period, he is threatening me that he will write only "Very Good" instead of "Excellent" in my A.C.R. He could not assess my ability.
I do not want to waste my precious time to teach him the mechanical subject. He had been denied E6 promotion twice and he has lost the hope of getting his E7 promotion. So, he is creating trouble to the management through me. Under these circumstances, I will not report to the Chief Engineer/Instrument. I will continue to report to the Dy. General Manager till a Chief Engineer/Mechanical is posted to this department. "

The above remarks of the petitioner about his immediate higher-up would self-speak a lot about the superiority complex and aggressive mindset with which the petitioner reacted during the troubled circumstances warranted by himself. Even though he himself stated in the above representation that the Chief Engineer is the person to make his work assessment, he never considered the Chief Engineer as his superior but as his subordinate. In fact, the Institution had a soft approach against the petitioner as many a times he was given serious advice and admonitions which did not work with him until ill-destiny had its sway resulting in the removal of the petitioner and for such outcome, the petitioner has to blame himself and not anyone else. The negative approach of the petitioner being reflected from the petitioner's representations is so overwhelming that none of the reasons attributed by him against the Officials and the Institution would lead anyone including this Court to take a sympathetical view in his favour.

9. As regards non-supply of documents as alleged by the petitioner, it is better to refer to the official communication, dated 17.06.1998, addressed to the petitioner by the Disciplinary Authority:-
" In the ref. 2nd cited above, Shri.R.Dhanabalan, Deputy Chief Engineer / System Monitoring had requested to furnish certain documents for submitting his explanation in response to the charge memo. referred (1) above. It is informed that the documents mentioned in Annexure-II to the Charge Memo will be filed in the enquiry by the presenting officer and copies of the said documents may be collected from the Presenting Officer during enquiry.
As regards the other documents i.e., copy of the Philips Committee Report, Job evaluation, Job responsibilities, Job specification etc., the same has no relevance to the charges levelled and as such these documents are not necessary to be furnished."
From the above communication, it is clear that the petitioner was given access to all relevant documents and what was not supplied was those documents irrelevant to the charges; therefore, the contention raised in this regard by the petitioner cannot be appreciated in his favour. Again, regarding the grievance of the petitioner that the author of the document 19.01.1998 viz., Deputy General manager/SME was not allowed to be examined by him, it is not in dispute that the charge memo is not based on the Note dated 19.01.1998 as it was a reply to certain reports submitted by the petitioner in respect of contract terms and machineries in the SME Division.

10. It is not out of context to refer at this moment to the earlier order, dated 23.11.2001, passed by this Court in W.P. No.6571 of 2001 filed by the petitioner herein challenging the show cause notice,

dated 13.03.2001, issued by the Director (Planning & Projects), NLC, whereby the petitioner was required to explain the four charges mentioned therein. This court, after considering the allegations made by the petitioner against the authorities, rejected the case of the petitioner by holding that no allegation of bias can be made against the Disciplinary Authority. The petitioner, while challenging the show cause notice, did not whisper anything against non-supply of any relevant document to submit his defence. Further, he did not even reserve his right or took liberty from the Court, while dismissing the writ petition, for furnishing some of the documents which according to him, despite being relevant and crucial, were not supplied. Therefore, it will be too late now for the petitioner to argue that he was not furnished with copies of relevant document which ultimately resulted in great prejudice and thereby, the proceedings of the Disciplinary Authority are rendered unsustainable in law.
At any rate, from the records available before this Court, I do not see any infirmity or irregularity or denial of any opportunity to the petitioner depriving him of the fair chance to project his case. The entire process of departmental proceedings in fact proceeded in the right track without giving any room for the Court to invoke the doctrine of proportionality so as to show any sympathy in favour of the petitioner.

11. With regard to interference in alike matters, it is relevant to quote below the observation of the Apex Court in Chairman & MD V.S.P. & Ors. v. Goparaju Sri Prabhakara Hari Babu (JT 2008 (4) SC 51),
" 17. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. {[See Sangeroid Remedies Ltd. v. Union of India & Ors. [(1999) 1 SCC 259]}. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.
Since none of the grounds raised by the petitioner merits acceptance and what is challenged being a reasoned order passed by the Authority well within the legal parameters without scope for any interference or judicial review, this Court has no other option but to dismiss the prayer of the petitioner.

12. Though the learned counsel appearing for the petitioner, focusing on the quantum of punishment, stated that the Disciplinary Authority imposed the grave punishment of dismissal and therefore, taking note of the fact that the petitioner has already reached the age of superannuation, the impugned order may be interfered with at least by modifying the punishment into one of compulsory retirement which would take care of his family as, in that event, he would be entitled for pension benefits, this Court, by looking into the case history and the background in which the respondents have been unpalatably assailed by the petitioner, is not inclined to interfere with the quantum of punishment as well.

13. Net result, writ petition fails and it is dismissed as devoid of any merit, however, there will be no order as to costs.

07.01.2013.
Index : yes / no.
Internet : yes / no.

JI.

T. RAJA, J.

W.P. No.8187 of 2002.

07.01.2013.

Pre Delivery Judgment in WP No.8187 of 2002.

To
The Hon'ble Mr. Justice T.RAJA.

Most respectfully submitted,